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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SDMS, INC., THOMAS P. ANDERSON, and KEN PECUS, Plaintiffs, v. ROCKY MOUNTAIN CHOCOLATE FACTORY, INC., Defendant.	Case No. 08CV833 (JM) (AJB) **NOTICE OF MOTION AND MOTION TO DISMISS** Date: August 1, 2008 Time: 1:30 p.m. Ctrm: 16 Judge: Hon. Jeffrey T. Miller

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 1, 2008, at 1:30 p.m. or as soon thereafter as the matter may be heard by the Honorable Jeffrey T. Miller in Courtroom 16 of the United States District Court located at 940 Front Street, San Diego, CA 92101-8900, Defendant Rocky Mountain Chocolate Factory, Inc. ("RMCF") will, and hereby does, move the Court for an Order dismissing with prejudice the First Amended Complaint filed by SDMS, Inc., Thomas Anderson and Ken Pecus (together, "Plaintiffs") in this case.

This Motion to Dismiss (the “Motion”) will be, and hereby is, made pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss Plaintiffs' First Amended Complaint and both of its Counts for failure to state a claim upon which relief can be granted. The grounds on which RMCF bases its Motion to Dismiss are set forth in the accompanying Memorandum Of Points And Authorities In Support

Of Defendant's Motion To Dismiss Pursuant To Federal Rule Of Civil Procedure 12(b)(6), filed herewith.

WHEREFORE, Defendant, RMCF, respectfully requests that the Court dismiss Plaintiffs' First Amended Complaint in its entirety with prejudice.

DATED: June 24, 2008

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